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DEC 14 2007

Technology Center 2100

In re Application of: ABDELAZIZ, et al.
Application No. 09/693,321
Attorney Docket No. 5181-57700
Filed: October 19, 2000
For: DYNAMIC DISPLAYS IN A
DISTRIBUTED COMPUTING
ENVIRONMENT

)
) **DECISION ON PETITION TO**
) **WITHDRAW HOLDING OF**
) **ABANDONMENT UNDER 37 CFR**
) **§1.181**
)
)

This is a decision on the petition, filed May 11, 2007 requesting the Withdrawal of the Abandoned status of the above-identified application, under 37 CFR § 1.181. A Notice of Abandonment was mailed on March 29, 2007 wherein the instant application was deemed abandoned for failure to respond timely and with a proper response to the new grounds of rejection set forth in the Examiner's Answer mailed July 26, 2006. The status letter filed November 13, 2007 is hereby acknowledged.

The petition is **GRANTED**.

RECENT PROSECUTION HISTORY

- (1) On November 29, 2005, the Examiner issued a Final Office action, rejecting all pending claims.
- (2) On January 23, 2006, remarks/arguments after Final rejection (37 CFR §1.116) were filed.
- (3) On February 2, 2006, an Advisory action was mailed.
- (4) On February 27, 2006, Applicant filed a Notice of Appeal.
- (5) On April 27, 2006, Appellant filed an Appeal Brief.

- (6) On July 26, 2006, an Examiner's Answer was mailed which introduced new grounds of rejection with respect to all pending claims.
- (7) On September 29, 2006, in accordance with 37 CFR § 41.39, Appellant filed a request that prosecution be reopened before the examiner along with a reply under 37 CFR § 1.111 with an amendment.
- (8) On December 12, 2006, a Notice of Non-Compliant Amendment (37 CFR § 1.121) was mailed.
- (9) On January 19, 2007, a response to the Notice was filed.
- (10) A Notice of Abandonment was mailed on March 29, 2007.
- (11) The instant petition was filed on May 11, 2007.

RELIEF REQUESTED

The instant petition under 37 CFR 1.181 requests the following relief: 1) to withdraw the holding of abandonment of the instant application and that 2) prosecution be reopened with the entry of the amendment filed September 29, 2006.

BASIS OF OPINION

The relevant portions of the Statutes and Rules are reproduced below. Highlighting is added to draw attention to critical phrases.

§ 41.39 Examiner's answer.

- (2) An examiner's answer may include a new ground of rejection.
- (b) If an examiner's answer contains a rejection designated as a new ground of rejection, appellant must within two months from the date of the examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection:
 - (1) Reopen prosecution . Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the new ground of rejection. A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

1207.03 [R-3] < New Ground of Rejection in Examiner's Answer

V. APPELLANT'S REPLY TO NEW GROUNDS OF REJECTION

A. Request That Prosecution Be Reopened by Filing a Reply

If appellant requests that prosecution be reopened, the appellant must file a reply that addresses each new ground of rejection set forth in the examiner's answer in compliance with 37 CFR 1.111 within two months from the mailing of the examiner's answer. The reply may also include amendments, evidence, and/or arguments directed to claims not

subject to the new ground of rejection or other rejections. If there is an after-final amendment (or affidavit or other evidence) that was not entered, appellant may include such amendment in the reply to the examiner's answer.

If the reply is not fully responsive to the new ground of rejection, but the reply is bona fide, the examiner should provide a 30-day or 1 month time period, whichever is longer, for appellant to complete the reply pursuant to 37 CFR 1.135(c). See MPEP § 714.03. If the reply is not bona fide (e.g., does not address the new ground of rejection) and the two-month time period has expired, examiner must sua sponte dismiss the appeal as to the claims subject to the new ground of rejection. See subsection "C. Failure to Reply to a New Ground of Rejection" below.

Once appellant files a reply in compliance with 37 CFR 1.111 in response to an examiner's answer that contains a new ground of rejection, the examiner must reopen prosecution by entering and considering the reply. The examiner may make the next Office action final unless the examiner introduces a new ground of rejection that is neither necessitated by the applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). See MPEP § 706.07(a).

ANALYSIS

With respect to item 1 above, Petitioner's timely amendment filed September 29, 2006 (certificate of mailing dated September 26, 2006), in response to the Examiner's new grounds of rejection, requests that "prosecution of the present application be reopened" (see page 1 thereof).

The examiner's new grounds of rejection in the Examiner's Answer were presented to address the claim limitation "*accessing a presentation schema in the distributed computing environment, wherein the presentation schema includes information for presenting results data for clients in the distributed computing environment, wherein the presentation schema is provided by the service.*" (see Examiner's Answer) and "to address the interpretation of the term 'service' as defined in the specification" (see Examiner's comments, Notice of Non-Compliant and Notice of Abandonment).

Appellant's reply filed September 29, 2006 under 37 CFR § 1.111, in addition to cancelling claim 18 and other changes, includes the following proposed change "a data presentation process accessing a presentation schema provided by the service, wherein the date presentation process and the service execute on separate devices in the distributed computing environment;" (see proposed claim 1). This proposed change is clearly directed to the issue at hand by attempting to further define the environment of the term "service" in the claim(s). The Examiner should note further, and in accordance with MPEP 1207.03, Appellant's reply may also include amendments, evidence, and/or arguments directed to claims not subject to the new ground of rejection or other rejections.

Finally, in the reply filed September 29, 2006, located in the REMARKS section thereof, Appellant clearly addresses the new grounds of rejection by way of rebuttal and/or traversal (see at least page 17 lines 5-9 and page 28 lines 13-16).

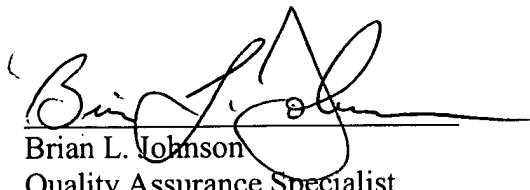
Therefore, the proposed changes are relevant to the new grounds of rejection and thus deemed to be a proper response under 37 CFR § 1.111 and in full compliance with 37 CFR § 41.39(b)(1).

DECISION

Accordingly, the petition is **GRANTED**.

The application is being forwarded to the technology support staff to **WITHDRAW** the holding of abandonment and to **ENTER** the amendment filed September 29, 2006 so as to place the application in amended status. Thereafter, the application will be forwarded to the Examiner for appropriate action and consideration of the amendment.

Any inquiries related to this decision may be directed to the undersigned at (571) 272-3595.



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